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or services without charge or at a charge that is less than the usual and normal charge for the goods or services is an expenditure. Examples of such goods or services include, but are not limited to: Securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists. If goods or services are provided at less than the usual and normal charge, the amount of the expenditure is the difference between the usual and normal charge for the goods or services at the time of the expenditure and the amount charged the candidate or political committee.

(2) For the purposes of paragraph (e)(1) of this section, *usual and normal charge for goods* means the price of those goods in the market from which they ordinarily would have been purchased at the time of the expenditure; and usual and normal charge for services, other than those provided by an unpaid volunteer, means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered.

§ 100.112 Contracts, promises, and agreements to make expenditures.

A written contract, including a media contract, promise, or agreement to make an expenditure is an expenditure as of the date such contract, promise or obligation is made.

§ 100.113 Independent expenditures.

An independent expenditure that meets the requirements of 11 CFR 104.4 or part 109 is an expenditure, and such independent expenditure is to be reported by the person making the expenditure in accordance with 11 CFR 104.4 and part 109.

§ 100.114 Office building or facility for national party committees.

A payment, distribution, loan, advance, or deposit of money or anything of value made by, or on behalf of, a national party committee for the purchase or construction of an office building or facility is an expenditure.

11 CFR Ch. I (1–1–10 Edition)

Subpart E—Exceptions to Expenditures

SOURCE: 67 FR 50585, Aug. 5, 2002, unless otherwise noted.

§ 100.130 Scope.

(a) The term *expenditure* does not include payments, gifts, or other things of value described in this subpart.

(b) For the purpose of this subpart, a payment made by an individual shall not be attributed to any other individual, unless otherwise specified by that other individual. To the extent that a payment made by an individual qualifies as a contribution, the provisions of 11 CFR 110.1(k) shall apply.

§ 100.131 Testing the waters.

(a) *General exemption.* Payments made solely for the purpose of determining whether an individual should become a candidate are not expenditures. Examples of activities permissible under this exemption if they are conducted to determine whether an individual should become a candidate include, but are not limited to, conducting a poll, telephone calls, and travel. Only funds permissible under the Act may be used for such activities. The individual shall keep records of all such payments. *See* 11 CFR 101.3. If the individual subsequently becomes a candidate, the payments made are subject to the reporting requirements of the Act. Such expenditures must be reported with the first report filed by the principal campaign committee of the candidate, regardless of the date the payments were made.

(b) *Exemption not applicable to individuals who have decided to become candidates.* This exemption does not apply to payments made for activities indicating that an individual has decided to become a candidate for a particular office or for activities relevant to conducting a campaign. Examples of activities that indicate that an individual has decided to become a candidate include, but are not limited to:

(1) The individual uses general public political advertising to publicize his or her intention to campaign for Federal office.

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(2) The individual raises funds in excess of what could reasonably be expected to be used for exploratory activities or undertakes activities designed to amass campaign funds that would be spent after he or she becomes a candidate.

(3) The individual makes or authorizes written or oral statements that refer to him or her as a candidate for a particular office.

(4) The individual conducts activities in close proximity to the election or over a protracted period of time.

(5) The individual has taken action to qualify for the ballot under State law.

§ 100.132 News story, commentary, or editorial by the media.

Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), Web site, newspaper, magazine, or other periodical publication, including any Internet or electronic publication, is not an expenditure unless the facility is owned or controlled by any political party, political committee, or candidate, in which case the cost for a news story:

(a) That represents a *bona fide* news account communicated in a publication of general circulation or on a licensed broadcasting facility; and

(b) That is part of a general pattern of campaign-related news account that give reasonably equal coverage to all opposing candidates in the circulation or listening area, is not an expenditure.

[67 FR 50585, Aug. 5, 2002, as amended at 71 FR 18613, Apr. 12, 2006]

§ 100.133 Voter registration and get-out-the-vote activities.

Any cost incurred for activity designed to encourage individuals to register to vote or to vote is not an expenditure if no effort is or has been made to determine the party or candidate preference of individuals before encouraging them to register to vote or to vote, except that corporations and labor organizations shall engage in such activity in accordance with 11 CFR 114.4 (c) and (d). *See also* 11 CFR 114.3(c)(4).

§ 100.134 Internal communications by corporations, labor organizations, and membership organizations.

(a) *General provision.* Any cost incurred for any communication by a membership organization, including a labor organization, to its members, or any cost incurred for any communication by a corporation to its stockholders or executive or administrative personnel, is not an expenditure, except that the costs directly attributable to such a communication that expressly advocates the election or defeat of a clearly identified candidate (other than a communication primarily devoted to subjects other than the express advocacy of the election or defeat of a clearly identified candidate) shall, if those costs exceed \$2,000 per election, be reported to the Commission on FEC Form 7 in accordance with 11 CFR 104.6.

(b) *Definition of labor organization.* For purposes of this section, *labor organization* means an organization of any kind (any local, national, or international union, or any local or State central body of a federation of unions is each considered a separate labor organization for purposes of this section) or any agency or employee representative committee or plan, in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(c) *Definition of stockholder.* For purposes of this section, *stockholder* means a person who has a vested beneficial interest in stock, has the power to direct how that stock shall be voted, if it is voting stock, and has the right to receive dividends.

(d) *Definition of executive or administrative personnel.* For purposes of this section, executive or administrative personnel means individuals employed by a corporation who are paid on a salary rather than hourly basis and who have policymaking, managerial, professional, or supervisory responsibilities.

(1) This definition includes—

(i) Individuals who run the corporation's business, such as officers, other executives, and plant, division, and section managers; and